

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	
)	
Amendment of Section 73.202(b),)	MB Docket No. 03-246
Table of Allotments,)	RM-10830
FM Broadcast Stations.)	
(Ocilla and Ambrose, Georgia))	

NOTICE OF PROPOSED RULE MAKING

Adopted: December 3, 2003

Released: December 8, 2003

Comment Date: January 30, 2004

Reply Date: February 17, 2004

By the Assistant Chief, Audio Division:

1. The Audio Division has before it for consideration a Petition for Rule Making filed by RTG Radio, LLC ("Petitioner"), licensee of Station WKAA(FM), Channel 249A, Ocilla, Georgia, pursuant to Sections 1.401 and 1.420(i) of the Commission's Rules. Petitioner requests the substitution of Channel 250A for Channel 249A at Ocilla, Georgia, the reallocation of Channel 250A to Ambrose, Georgia, and the modification of the license of Station WKAA(FM) accordingly. Petitioner states that it will apply for Channel 250A when allotted to Ambrose, and further states that it will construct the facilities if the application is granted.

2. Petitioner states that it desires to change the community of license for Station WKAA(FM) from Ocilla to Ambrose under the guidelines set forth in *Amendment of the Commission's Rules Regarding Modification of FM and TV Authorizations to Specify a New Community of License*.¹ Petitioner states that the proposed use of Channel 250A at Ambrose is mutually exclusive with the current use of Channel 249A at Ocilla. Petitioner further states that Ocilla will not be deprived of its only local service because it is currently served by Station WLPF(FM), Channel 253A. Finally, petitioner states that the provision of a first local service to Ambrose satisfies Priority 3 of the Commission's allotment priorities,² thus resulting in a

¹ 4 FCC Rcd 3870 (1989), *recon. granted in part*, 5 FCC Rcd 7094 (1990). The Commission stated that a station may change its community of license without subjecting the license to other expressions of interest if (1) the proposed allotment is mutually exclusive with the current allotment; (2) the current community of license will not be deprived of its only local service; and (3) the proposed arrangement of allotments is preferred under the Commission's allotment priorities.

² In determining whether to approve a change of community, we compare the existing versus the proposed arrangement of allotments using the FM allotment priorities set forth in *Revision of FM Assignment Policies and Procedures*, 90 FCC 2d 88 (1982), *recon. denied*, 56 RR 2d 448 (1983). The FM allotment priorities are: (1) first full-time aural service; (2) second full-time aural service; (3) first local service; and (4) other public interest matters. Co-equal weight is given to priorities (2) and (3).

preferential arrangement of allotments when compared to the retention of a second local service at Ocilla.

3. The loss area, consisting of 2,054 square kilometers, contains 63,288 persons. The gain area, consisting of 2,054 square kilometers, contains 43,034 persons. The proposal thus would produce a net loss of 20,254 persons and neither gain nor loss in the land area served. Both the loss area of Channel 249A at Ocilla and the gain area of Channel 250A at Ambrose are and will continue to be served by at least five other existing full-time services, and thus, they are well-served areas. Neither the present Channel 249A facility at Ocilla nor the proposed Channel 250A facility at Ambrose covers any part of any urbanized area with the 70 dBu contour.

4. This proposal warrants consideration because the proposed allotment would provide Ambrose with a first local aural broadcast transmission service. In support of the proposal, Petitioner states that Ambrose, incorporated as a city in 1954, has a population of 313 persons, according to the 2000 U.S. Census. Ambrose has its own branch post office, ZIP code (31512), elementary school ("Ambrose Elementary School"), and public library ("Ambrose Public Library"). Ambrose provides its residents with municipal services such as a waste management system, a water treatment plant, and its own volunteer fire department. Ambrose is governed by a mayor and five council members. There are four churches and several restaurants and retail stores that identify themselves by incorporating "Ambrose" in their business names. Ambrose has a local baseball field ("Ambrose Baseball Field") and its own community center for local events ("Ambrose Community Center").

5. The proposed allotment could be made with a site restriction of 13.4 km (8.3 miles) southeast of Ambrose.³ Accordingly, we seek comment on the proposed amendment of the FM Table of Allotments, Section 73.202(b) of the Commission's Rules, with respect to Ambrose, Georgia, and Ocilla, Georgia:

<u>Community</u>	<u>Present</u>	<u>Proposed</u>
Ambrose, Georgia	---	250A
Ocilla, Georgia	249A, 253A	253A

6. The Commission's authority to institute rule making proceedings, showings required, cut-off procedures, and filing requirements are contained in the attached Appendix and are incorporated by reference herein. In particular, we note that a showing of continuing interest is required in paragraph 2 of the Appendix before a channel will be allotted.

7. Pursuant to Sections 1.415 and 1.419 of the Commission's Rules, interested parties may file comments on or before January 30, 2004, and reply comments on or before February 17, 2004, and are advised to read the Appendix for the proper procedures. Comments should be filed with the Federal Communications Commission, Office of the Secretary, 445 Twelfth Street, S.W., TW-A325, Washington, D.C. 20554. Additionally, a copy of any filing should be served on counsel for the Petitioner, as follows:

David G. O'Neil

³ The proposed reference coordinates for Channel 250A at Ambrose are: 31-30-36 NL and 82-54-48 WL.

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(Counsel for Petitioner)

8. Parties who choose to file by paper must file an original and four copies of each filing. Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail (although we continue to experience delays in receiving U.S. Postal Service mail). The Commission's contractor, Natek, Inc., will receive hand-delivered or messenger-delivered paper filings for the Commission's Secretary at 236 Massachusetts Avenue, N.E., Suite 110, Washington, D.C. 20002. The filing hours at this location are 8:0 a.m. to 7:00 p.m. All hand deliveries must be held together with rubber bands or fasteners. All envelopes must be disposed of before entering the building. Commercial overnight mail (other than U.S. Postal Service Express Mail or Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743. U.S. Postal Service first-class mail, Express Mail, and Priority Mail should be addressed to 445 12th Street, S.W., Washington, D.C. 20554. All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.

9. The Commission has determined that the relevant provisions of the Regulatory Flexibility Act of 1980 do not apply to a rule making proceeding to amend the FM Table of Allotments, Section 73.202(b) of the Commission's Rules. *See Certification that Section 603 and 604 of the Regulatory Flexibility Do Not Apply to Rule Making to Amend Sections 73.202(b), 73.504 and 73.606(b) of the Commission's Rules*, 46 Fed.Reg. 11549 (February 9, 1981).

10. For further information concerning this proceeding, contact Deborah A. Dupont, Media Bureau, at (202)418-7072. For purposes of this restricted notice and comment rule making proceeding, members of the public are advised that no *ex parte* presentations are permitted from the time the Commission adopts a *Notice of Proposed Rule Making* until the proceeding has been decided and such decision in the applicable docket is no longer subject to reconsideration by the Commission or review by any court. An *ex parte* presentation is not prohibited if specifically requested by the Commission or staff for the clarification or adduction of evidence or resolution of issues in the proceeding. However, any new written information elicited from such a request or any summary of any new information shall be served by the person making the presentation upon the other parties to the proceeding in the particular docket unless the Commission specifically waives this service requirement. Any comment which has not been served on the Petitioner constitutes an *ex parte* presentation and shall not be considered in the proceeding. Any reply comment which has not been served on the person(s) who filed the comment, to which the reply is directed, constitutes an *ex parte* presentation and shall not be considered in this proceeding.

FEDERAL COMMUNICATIONS COMMISSION

John A. Karousos
Assistant Chief, Audio Division

Media Bureau

APPENDIX

1. Pursuant to authority contained in Sections 4(i), 5(c)(1), 303(g) and (r), and 307(b) of the Communications Act of 1934, as amended, and Sections 0.61, 0.204(b) and 0.283 of the Commission's Rules, IT IS PROPOSED TO AMEND the FM (TV) Table of Allotments, Section 73.202(b) (73.606(b)) of the Commission's Rules and Regulations, as set forth in the Notice of Proposed Rule Making to which this Appendix is attached.

2. Showings Required. Comments are invited on the proposal discussed in the Notice of Proposed Rule Making to which this Appendix is attached. The proponent will be expected to answer whatever questions are presented in initial comments. The proponent of a proposed allotment is also expected to file comments even if it only resubmits or incorporates by reference its former pleadings. It should also restate its present intention to apply for the channel if it is allotted and, if authorized, to build a station promptly. Failure to file may lead to denial of the request.

3. Cut-off Procedures. The following procedures will govern the consideration of filings in this proceeding.

(a) Counterproposals advanced in this proceeding itself will be considered, if advanced in initial comments, so that parties may comment on them in reply comments. They will not be considered if advanced in reply comments. (See Section 1.420(d) of the Commission's Rules.)

(b) With respect to petitions for rule making which conflict with the proposal in this Notice, they will be considered as comments in the proceeding, and Public Notice to this effect will be given as long as they are filed before the date for filing initial comments herein. If they are filed later than that, they will not be considered in connection with the decision in this docket.

(c) The filing of a counterproposal may lead the Commission to allot a different channel than was requested for any of the communities involved.

4. Comments and Reply Comments; Service. Pursuant to applicable procedures set out in Sections 1.415 and 1.420 of the Commission's Rules and Regulations, interested parties may file comments and reply comments on or before the dates set forth in the Notice of Proposed Rule Making to which this Appendix is attached. All submissions by parties to this proceeding or by persons acting on behalf of such parties must be made in written comments, reply comments, or other appropriate pleadings. Comments shall be served on the Petitioner by the person filing the comments. Reply comments shall be served on the person(s) who filed comments to which the reply is directed. Such comments and reply comments shall be accompanied by a certificate of service. (See Section 1.420(a), (b) and (c) of the Commission's Rules.) Comments should be filed with the Secretary, Federal Communications Commission, Washington, D.C. 20554.

5. Number of Copies. In accordance with the provisions of Section 1.420 of the Commission's Rules and Regulations, an original and four copies of all comments, reply comments, pleadings, briefs, or other documents shall be furnished the Commission.

6. Public Inspection of Filings. All filings made in this proceeding will be available for examination by interested parties during regular business hours in the Commission's Reference Information Center (Room CY-A257), at its headquarters, 445 Twelfth Street, SW., Washington, D.C.